

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DAVID A. MOWAT COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 80-56

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the assessment of a \$250 civil penalty for the alleged violations of sections 8.02(3), 8.05(1) and 8.02(5) of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana, at a formal hearing in Seattle, on July 2, 1980. Administrative law judge William A. Harrison presided.

Appellant was represented by its project manager, William Ott; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 On or about January 18, 1980, at about 11:50 a.m., respondent's
5 inspector observed a smoke plume from an outdoor fire while on routine
6 patrol. Upon further investigation the inspector came upon a viaduct
7 construction site within respondent's jurisdiction near Maple Road and
8 I-5 in Alderwood Manor upon which the outdoor fire was located. The
9 unattended ten foot diameter fire was near the viaduct. The fire
10 contained numerous pieces of plywood and two-by four-sized lumber; no
11 natural vegetation was in the fire. The inspector talked with
12 appellant's employee at the site who explained that he thought such a
13 fire could be ignited. Appellant did not possess a permit for the
14 instant fire from either respondent or the fire department. Appellant
15 promptly extinguished the fire at the inspector's request.

16 For the foregoing events, appellant was issued a notice of
17 violation citing sections 8.02(3), 8.05 and 8.02(5) of Regulation I.
18 A \$250 civil penalty was assessed from which followed this appeal.

19 II

20 Appellant ignited the fire for warming purposes and has done so in
21 the past. Appellant does not believe that a civil penalty was
22 appropriate in this case.

23 III

24 Appellant has a record of one notice of violation and civil
25 penalty under Regulation I.

26 FINAL FINDINGS OF FACT,
27 CONCLUSION OF LAW AND ORDER

IV

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto which are noticed.

Section 8.02(3) makes it unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors.

Section 8.05(1) makes it unlawful for any person to cause or allow any outdoor fire other than landclearing or residential burning unless prior written approval has been issued by respondent.

Section 8.02(5) makes it unlawful for any person to cause or allow any outdoor fire in violation of any applicable law, rule or regulation of any governmental agency having jurisdiction over such fire.

Section 3.29 provides for a civil penalty of up to \$250 per day for each violation of Regulation I.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant was not shown to have violated section 8.02(5) of Regulation I because there was no evidence of a law, rule or

1 regulation which was violated excepting that of respondent.

2 II

3 Appellant violated section 8.05(1) as alleged because it had no
4 written approval from respondent for the instant fire.

5 III

6 Appellant violated section 8.02(3) as alleged by burning materials
7 prohibited by the regulation.

8 IV

9 The civil penalty is reasonable in amount and should be affirmed.

10 V

11 Appellant's contention that the open fire was intended for hand
12 warming purposes would not bring it within any exception of the
13 regulation.

14 VI

15 Any Finding of Fact which should be deemed a Conclusion of Law is
16 hereby adopted as such.

17 From these Conclusions the Board enters this

18 ORDER

19 The \$250 civil penalty is affirmed.

20 DATED this 28th day of July, 1980.

21 POLLUTION CONTROL HEARINGS BOARD

22
23 
24 NAT W. WASHINGTON, Chairman

25 
26 DAVID AKANA, Member
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